

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

APRIL 21, 2015

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, April 21, 2015 at 8:30 a.m. in the Real Estate Commission Conference Room, 64 South Street, Concord, New Hampshire 03301.

- I. Meeting was called to order at 8:30 a.m. by Chairman Daniel Jones.
Present: Commissioners Daniel Jones, David Dunn, William Barry, Calley Milne, and Paul Lipnick.
- II. Chairman Daniel Jones welcomed the new Real Estate Investigator Kinsman (“Kinny”) Corthell to the Commission and sadly announced the resignation of the Attorney Commission Member David Dunn and thanked him on behalf of the Commission for all of his accomplishments while serving on the Commission since February 2009.
- III. On motion by Commissioner Barry, seconded by Commissioner Milne, the Commission approved the Minutes of the Commission meeting held on March 17, 2015.
- IV. **APPOINTMENTS**
8:35 a.m. Show Cause Hearing – KRISTIE DESAUTELS appeared before the Commission for a show cause hearing regarding her criminal history record submitted with her application for an original salesperson’s license. After review and discussion, the Commission, on motion by Commissioner Lipnick, seconded by Commissioner Dunn, decided to allow Ms. Desautels to apply for her original salesperson’s license. Commissioner Barry was opposed to the decision.

8:50 a.m. GERRY O’CONNELL, President of the NH CIBOR, along with Neal Barrett and Mark Dickey appeared before the Commission to propose a change to Rea 701.01 similar to previous language that existed in Rea 701.01, which stated “A licensee involved in a transaction for other than a one to 4 family dwelling shall disclose the agency relationship, or non-agency relationship, to the seller/landlord and buyer/tenant, or to the seller/landlord’s and buyer/tenant’s agents at the earliest practical opportunity, but no later than the preparation of an offer to purchase or lease real estate. “, with added language that absent the brokerage relationship disclosure form the consumers will receive the benefit of confidentiality. After review and discussion, the Commission requested the NH CIBOR submit their suggestions for change for distinction between residential and commercial requirements for Rea 701.01.

10:03 a.m. ADAM DEAN of the Bean Group appeared before the Commission to discuss having one managing broker temporarily manage two Bean Group branch locations. Mr. Dean explained to the Commission that the managing broker from the Bean Group Wolfeboro office resigned and Mr. Dean was requesting that Glenn Smith be temporarily designated as managing broker for the Bean Group Wolfeboro office and the Meredith office. Mr. Dean explained that Glenn Smith lives right between the two offices, which are approximately 30 miles apart, and that there are 7 agents licensed in the Meredith office and 11 in the Wolfeboro office. After review and discussion, the Commission, on motion by Commissioner Milne, seconded by Commissioner Barry, decided to

allow the designation of Glenn Smith as the managing broker for the branch offices in Wolfeboro and Meredith offices.

10:10 a.m. STEPHANIE CALL appeared before the Commission by conference call to request reinstatement of her lapsed salesperson's license which lapsed on October 27, 2014 as required by RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Dunn, seconded by Commissioner Lipnick, decided to allow the reinstatement of Ms. Call's lapsed license based on good cause as required by RSA 331-A:18, II as long as all required documentation and fees are submitted to the Commission by April 27, 2015.

V. **HEARING 10:17 AM**

FILE NO. 2014-064 NEW HAMPSHIRE REAL ESTATE COMMISSION VS STEVEN B. GRAY

The following persons were present at the hearing:

Commission: Commissioners David Dunn, William Barry, Paul Lipnick and Calley Milne.

Evaluator: Commissioner Jones evaluated the above matter and abstained from participation in the discussion.

Complainant: The NH Real Estate Commission through its Investigator Kinsman Corthell

Attorney: Pro Se

Respondent: Steven B. Gray

Attorney: Pro Se

Witnesses: Belynda Littlefield
Michelle Gelinias
Sharon Wells

VI. **OTHER BUSINESS**

1. The Commission unanimously approved the following date for the May meeting:

May 19, 2015 at 8:30 a.m.

2. CASE EVALUATIONS

(a) FILE NO. 2015-005

Evaluator: Commissioner Milne

Determination: On motion by Commissioner Barry, seconded by Commissioner Dunn, the

Commission approved the evaluating commissioner's determination of no violation, no hearing necessary.

(b) FILE NO. 2014-034

Evaluator: Commissioner Milne

Determination: On motion by Commissioner Barry, seconded by Commissioner Dunn, the Commission approved the evaluating commissioner's determination of no violation, no hearing necessary.

3. ORDERS

The following Orders were approved by the Commission and are attached to the Minutes of this meeting:

(1) FILE NO. 2013-035 NEW HAMPSHIRE REAL ESTATE COMMISSION VS GEORGE N. SANDERS DBA: ABSOLUTE REALTY

(2) FILE NO. 2014-054 NEW HAMPSHIRE REAL ESTATE COMMISSION VS ERIC J. HALL & NATHANIEL J. ROXO & ANTONIO F. ROXO

4. SETTLEMENT AGREEMENTS

The following Settlement Agreements were approved by the Commission and are attached to the Minutes of this meeting:

(1) FILE NO. 2014-049 NEW HAMPSHIRE REAL ESTATE COMMISSION VS ROBERT B. SAMAHA

(2) FILE NO. 2014-045 NEW HAMPSHIRE REAL ESTATE COMMISSION VS JOSHUA J. SEYMOUR

5. COURSE ACCREDITATIONS AND RE-ACCREDITATIONS

The following continuing education courses were approved for accreditation by the Commission:

WHO CAN SELL THIS HOME AND HOW? Course Provider: Kata Catalano	1 HOUR
EVERYDAY ETHICS IN REAL ESTATE (Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
VIRTUAL BROKERAGE: HOW TO DO IT (Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS

CFPB INTERGRATED MORTGAGE DISCLOSURE - ARE YOU READY FOR AUGUST 1, 2015? Course Provider: Red Door Title, LLC	3 HOURS
INTERESTS IN REAL ESTATE Course Provider: Lynne Paul – Phenix Title	2 HOURS
NEW CONSTRUCTION – THE SALES AND MARKETING PROCESS Course Provider: Debra Russell Gallant	3 HOURS
NEW CONSTRUCTION – THE VERTICAL PROCESS Course Provider: Debra Russell Gallant	3 HOURS
UNDERSTANDING OUR CLIENTS Course Provider: Debra Russell Gallant	3 HOURS
SAFER SHOWINGS FOR REAL ESTATE PROFESSIONALS Course Provider: Performance Business Solutions, LLC	2 HOURS
NEW CONSTRUCTION – THE HORIZONTAL PROCESS Course Provider: Debra Russell Gallant	3 HOURS
MINIMIZING INCOME TAX THROUGH COST SEGREGATION STUDIES Course Provider: NH CIBOR	2 HOURS
QM, ATR, AND LO COMPENSATION RULES MYTH VS FACT! Course Provider: Merrimack Mortgage Company, Inc.	1 HOUR
LENDER VENDOR MANAGEMENT REQUIREMENTS FOR REAL ESTATE ATTORNEYS AND TITLE AGENTS – TODAY AND TOMORROW! Course Provider: Merrimack Mortgage Company, Inc.	1 HOUR
ARE YOU READ FOR TRID! Course Provider: Merrimack Mortgage Company, Inc.	1 HOUR
The following continuing education courses were approved for re-accreditation by the Commission upon appropriate review by the Executive Director:	
RESIDENTIAL WATER WELLS & DRINKING WATER Course Provider: American Ground Water Trust	3 HOURS
PROPERTY CONDITION AND DISCLOSURE ISSUES Course Provider: John Doran	3 HOURS

RISK REDUCTION THROUGH COMPLIANCE AND AWARENESS Course Provider: John Doran	3 HOURS
FORECLOSURES – WHAT LICENSEES NEED TO KNOW Course Provider: Arthur Gary School of Real Estate	3 HOURS
FHA 203K AS A TEAM SPORT Course Provider: Arthur Gary School of Real Estate	3 HOURS
WHAT SHOULD I DO IN THIS SITUATION? Course Provider: Arthur Gary School of Real Estate	3 HOURS
ADA AND FAIR HOUSING (Internet) Course Provider: Arthur Gary School of Real Estate	3 HOURS
FEDERAL LAW AND COMMERCIAL REAL ESTATE (Internet) Course Provider: Arthur Gary School of Real Estate	3 HOURS
TAX FREE EXCHANGES Course Provider: Arthur Gary School of Real Estate	3 HOURS
RED FLAGS PROPERTY INSPECTION GUIDE (Correspondence) Course Provider: Arthur Gary School of Real Estate	3 HOURS
AGENCY Course Provider: ABC Real Estate Training Institute	2 HOURS
ARCHITECTURE (Class & Internet) Course Provider: ABC Real Estate Training Institute	2 HOURS
PROPERTY MANAGEMENT Course Provider: ABC Real Estate Training Institute	2 HOURS
APPRAISAL PROCESS Course Provider: ABC Real Estate Training Institute	2 HOURS
FAIR HOUSING Course Provider: ABC Real Estate Training Institute	2 HOURS
SELLING HISTORIC HOMES Course Provider: ABC Real Estate Training Institute	2 HOURS

REAL ESTATE FINANCING Course Provider: ABC Real Estate Training Institute	2 HOURS
PROPERTY MANAGEMENT (Correspondence) Course Provider: ABC Real Estate Training Institute	3 HOURS
RED FLAGS PROPERTY INSPECTION (Correspondence) Course Provider: ABC Real Estate Training Institute	3 HOURS
NH DESIGNATED AGENCY Course Provider: Coldwell Banker Residential Brokerage	3 HOURS
1031 TAX DEFERRED EXCHANGES – BASIC Course Provider: Coldwell Banker Residential Brokerage	3 HOURS
1031 TAX DEFERRED EXCHANGES – ADVANCED Course Provider: Coldwell Banker Residential Brokerage	3 HOURS
RISK MANAGEMENT (Class & Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
REVERSE MORTGAGES FOR SENIOR HOMEOWNERS (Class & Correspondence) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
BUYER REPRESENTATION IN REAL ESTATE (Class, Correspondence & Int.) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
FAIR HOUSING (Class, Correspondence & Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
THE TRUTH ABOUT MOLD (Class, Correspondence & Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
PROPERTY MANAGEMENT AND MANAGING RISK (Class, Correspondence & Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
REAL ESTATE FINANCE TODAY (Class, Correspondence & Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS

RED FLAGS PROPERTY INSPECTION GUIDE (Class, Correspondence & Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
UNDERSTANDING 1031 TAX-FREE EXCHANGES (Class, Correspondence & Internet) Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
PROPERTY DISCLOSURE: THE REAL ESTATE PROFESSIONAL'S GUIDE TO REDUCING RISK Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
CORE Course Provider: John Doran	3 HOURS
THE SALES AGREEMENT – IT'S YOUR MAP! Course Provider: John Doran	3 HOURS
THE VALUE OF ETHICS Course Provider: John Doran	3 HOURS
CLIENT ORIENTED NEGOTIATING Course Provider: John Doran	3 HOURS
HOME INSPECTION 101 FOR REAL ESTATE PROFESSIONALS Course Provider: National Property Inspections, Inc.	1 AND 3 HOURS
CORE Course Provider: Carl Ripaldi School of Real Estate	3 HOURS
TAX DEFERRED EXCHANGES Course Provider: Exchange Authority, LLC	1 AND 2 HOURS
WATER QUALITY ISSUES OF THE REGION Course Provider: Secondwind Water Systems, Inc.	3 HOURS
RESIDENTIAL REAL ESTATE BROKERAGE PROFESSIONAL ETHICS Course Provider: Anita Hill	2 HOURS
BUYER AGENCY Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS

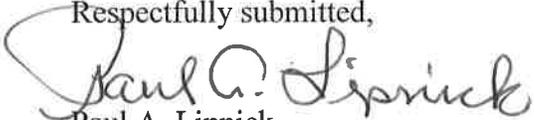
REAL ESTATE LAWS, REGULATIONS & PRACTICES Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
FAIR HOUSING & ADA Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
RISK MANAGEMENT Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
MAKING THE SALE Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
CODE OF ETHICS Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
KNOW YOUR CONTRACTS Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
WHAT WOULD YOU DO IN THIS SITUATION AND WHY? Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
ANTITRUST Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
LET'S TALK AGENCY Course Provider: Kathy Roosa School of Real Estate	2 AND 3 HOURS
DEEDS, DESCRIPTIONS & DUE DILIGENCE Course Provider: Coldwell Banker Residential Brokerage	3 HOURS
ENVIRONMENTAL ISSUES (Internet) Course Provider: Kathy Roosa School of Real Estate	3 HOURS
FAIR HOUSING (Internet) Course Provider: Kathy Roosa School of Real Estate	3 HOURS
REAL ESTATE FINANCE TODAY (Internet) Course Provider: Kathy Roosa School of Real Estate	3HOURS
RED FLAGS PROPERTY INSPECTION (Internet) Course Provider: Kathy Roosa School of Real Estate	3 HOURS

RISK MANAGEMENT (Internet)
Course Provider: Kathy Roosa School of Real Estate

3 HOURS

VII. ADJOURNMENT

On a motion by Commissioner Dunn, seconded by Commissioner Milne, Chairman Daniel Jones adjourned the meeting at 2:45 p.m.

Respectfully submitted,

Paul A. Lipnick
Clerk

**Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301**

In The Matter Of: **Docket No.: 2013-035**
New Hampshire Real Estate Commission v. George N. Sanders, Jr.
dba: Absolute Realty
License No.: 047614
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of George N. Sanders, Jr. ("Respondent" or "Mr. Sanders") in Docket Number 2013-035.

Background Information:

Respondent was the listing agent for 3 New Hampshire property listings which were posted on the Northern New England Real Estate Network ("NNEREN") and Absolute Realty websites during the time the Respondent's real estate broker license was expired. On September 10, 2013, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2013-035 and initiated an Amended Complaint File No. 2013-035 on January 8, 2014 against Respondent. Subsequent to an investigation, on October 24, 2014, the Commission issued a Notice of Hearing for a hearing scheduled for November 18, 2014.

On Tuesday, November 18, 2014, at 9:36 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
William E. Barry, Commissioner
Paul A. Lipnick, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Mr. Sanders was pro se.

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

The following exhibits were introduced into evidence and accepted into the record:

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 – Documents from Complaint File 2013-035, pages 1-113.

- The Respondent's exhibits introduced:
Exhibit A – Documents from Complaint File No. 2013-035, pages A-OZ.

The following witnesses were present and testified at the hearing:

- Daniel S. Jones, Evaluating Commissioner, NH Real Estate Commission

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

1. Respondent was first granted a license as a real estate salesperson by the Commission on February 13, 1996 and a real estate broker license on August 26, 1999, license #047614. Respondent has been doing business as Absolute Realty since September 13, 2002. Respondent is currently licensed with a license period of August 29, 2013– August 26, 2015.
2. Respondent's New Hampshire real estate broker license expired on August 26, 2013 and was expired until August 29, 2013. Respondent's NH broker license renewal application and fee of \$110.00 was received at the Commission office by US mail on August 28, 2013, and Respondent came to the Commission office on August 29, 2013 to pay the required license late fee due of \$60.00. Respondent's license was issued on August 29, 2013. (Ex. A, page NK-OC)
3. Respondent testified at the hearing that he mailed his broker renewal application on August 26, 2013, the date his license expired. Respondent stated at the hearing that he should have delivered his renewal application to the Commission office on August 26, 2013 instead of placing the renewal application in the mail on August 26, 2013.

4. Respondent came to the Commission office to pay a \$60 late fee to renew his license on August 29, 2013 after being notified earlier in the day by Investigator Flanagan that Respondent had active listings while his license was expired.

5. Respondent agreed at the hearing that on August 29, 2013, Respondent was the listing agent for 3 New Hampshire property listings posted on Northern New England Real Estate Network (NNEREN) and Absolute Realty websites for 501 Old Claremont Road, Charlestown, NH, Multiple Listing Service (MLS) #4258090, 29 Grove, Claremont, NH, MLS #4259178, and 51 NH Route 4A, Enfield, NH MLS #4247824 with an expired NH broker's license that expired on August 26, 2103. (Ex. 1, pages 4-13)

6. Documents requested by Investigator Flanagan after receiving Respondent's reply to the original complaint indicated Respondent was posting a \$200 co-broke commission on NNEREN for 501 Old Claremont Road, Charlestown, NH, MLS #4258090 and 29 Grove, Claremont, NH MLS #4259178; however the Exclusive Listing Agreements provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators.

7. When Respondent had initially replied (email 11/15/13 and 11/8/13) to Investigator Flanagan request for this listing information (email 11/7/13), Respondent omitted the information regarding the co-broke amount posted by only providing a partial printout.

8. Respondent testified that it was requested that he submit to the Commission a listing history and when he submitted the listings that are available for customer display version that did not display the co-broke commission he felt it was a miscommunication and he was complying with the request. Respondent later submitted the full display version listings showing co-broke commission.

9. Respondent entered into an Exclusive Listing Agreement with sellers Robert L. & Kathryn W. King for 501 Old Claremont Road, Charlestown, NH on June 19, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, and the sellers signed an authorization to submit the listing into the MLS on July 30, 2013. On July 30, 2013, Respondent entered the listing in the MLS with a co-broke commission of \$200, but failed to obtain written permission from the sellers to allow the Respondent the sole discretion to change the

co-broke commission within the listing until September 16, 2013. (Exhibit 1, pages 22-23, 39-40, 97-98)

10. Respondent testified at the hearing that he had an oral agreement with the sellers and when Investigator Flanagan requested the documentation for the listings, he had the sellers sign the addendum to the listing agreement on September 16, 2013, because he could not physically provide an oral agreement. (Ex. 1, page 40)

11. Respondent entered into an Exclusive Listing Agreement with Seller Stella J. Hoskiewicz for 29 Grove Street, Claremont, NH on July 12, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, and the sellers signed an authorization to submit the listing into the MLS and an Addendum to the Exclusive Listing Agreement allowing the Respondent the sole discretion to change the co-broke commission on August 2, 2013. Respondent entered the listing into the MLS with a \$200 co-broke commission on August 2, 2013. (Exhibit 1, pages 42-43, 57-58, 99-100)

12. Respondent entered into an Exclusive Listing Agreement with Seller Sherry A. Jones for 51 NH Route 4A in Enfield, NH on April 25, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, and the sellers signed an authorization to submit the listing into the MLS on June 24, 2013; however Respondent entered the listing into MLS with a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators prior to the signed authorization to submit the listing to MLS on June 20, 2013. (Exhibit 1, pages 62-63, 79, 102-103)

13. Respondent testified at the hearing that Seller Sherry Jones was out of town and instructed Respondent by telephone to place the listing on the MLS on June 20, 2013 and Ms. Jones signed the authorization to submit the listing to MLS on June 24, 2013.

14. Respondent testified that the \$200 co-broke commission is an incentive to the buyer agent and promotes cooperation and communication. Respondent stated that a qualified buyer agent would not care that the commission is only a \$200 co-broke, and that the \$200 co-broke is to entice qualified agents who will have qualified buyers.

Relevant Law:

RSA 331-A:1 Purpose. It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

RSA 331-A:2, XV. "Unprofessional conduct" means any action by a licensee or accredited individual, institution, or organization which is unlawful, dishonorable, unethical, or immoral.

RSA 331-A:3 Prohibition. It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or real estate salesperson without a license and otherwise complying with the provisions of this chapter.

RSA 331-A:18, IV. The rights of the licensee under such expired or lapsed license shall be terminated. It shall be unlawful to act or attempt or offer to act in any matter as a real estate broker or salesperson under an expired or lapsed license.

RSA 331-A:25-b Seller Agent; Duties.

I. A licensee engaged by a seller or landlord shall:

(a) Perform the terms of the written brokerage agreement made with the seller or landlord.

RSA 331-A:26 Prohibited Conduct. The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

XXVI. Advertising the availability of real estate or the services of a licensee in a false, misleading or deceptive manner.

XXVIII. Breaching a fiduciary duty owed by a licensee to the principal in a real estate transaction.

XXIX. Unprofessional conduct defined in RSA 331-A:2, XV.

XXXV. Failure to produce any document, book or record, in the licensee's possession or under the licensee's control, concerning any real estate transaction under investigation by the commission for inspection and copying.

XXXVI. Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.

RSA 331-A:34 Penalty. Any person acting as a real estate broker or real estate salesperson, without a license, shall be guilty of a class A misdemeanor if a natural person, or guilty of a felony if any other person.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. On August 29, 2013, Respondent was the listing agent for 3 New Hampshire property listings posted on Northern New England Real Estate Network (NNEREN) and Absolute Realty websites for 501 Old Claremont Road, Charlestown, NH, Multiple Listing Service (MLS) #4258090, 29 Grove,

Claremont, NH, MLS #4259178, and 51 NH Route 4A, Enfield, NH MLS #4247824 with an expired NH broker's license that expired on August 26, 2103, and is found in violation of RSA 331-A:18, IV and RSA 331-A:3. (Notice of Hearing, paragraph 5A and 5B)

2. The Commission found that Respondent entered into an Exclusive Listing Agreement with sellers Robert L. & Kathryn W. King for 501 Old Claremont Road, Charlestown, NH on June 19, 2013 which provided for a 2.5% co-broke commission for buyer's agents and a 1% co-broke commission for facilitators, but entered the listing in the MLS with a co-broke commission of \$200 on July 30, 2013 without obtaining written permission from the sellers to change the co-broke commission, and found that the Respondent advertised the availability of real estate or services of a licensee in a false, misleading or deceptive manner in violation of RSA 331-A:26, XXVI; breached a fiduciary duty owed by the Respondent to the principal in the real estate transaction, in violation of RSA 331-A:26, XXVIII; engaged in professional conduct in violation of RSA 331-A:26, XXIX; Respondent demonstrated untrustworthiness to act as a broker in violation of RSA 331-A:26, XXXVI; and Respondent failed to perform the terms of the written brokerage agreement made with the sellers, in violation of RSA 331-A:25-b, I (a). (Notice of Hearing, paragraph 5D, 5E, 5F, 5G, and 5H)

3. The Commission found that the Respondent was not intently acting as a real estate broker without a license and did not violate RSA 331-A:34 (Notice of Hearing, paragraph 5C)

4. The Commission found that the Respondent didn't fail to produce any document, book or record, in the licensee's possession or under the licensee's control, concerning any real estate transaction under investigation by the commission for inspection and copying when he submitted the customer display version of the MLS listing instead of the full display version, and did not violate RSA 331-A:26, XXXV. (Notice of Hearing, paragraph 5I)

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission has voted to order the following:

IT IS **ORDERED** that the Respondent pay a disciplinary fine in the amount of three thousand dollars (\$3,000) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order, and Respondent shall show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Ethics by submitting to the Commission an affidavit for the completed course (this continuing education course is to be completed by classroom delivery method only and are not to be counted towards the Respondent's continuing education requirements for renewal of license) within ninety (90) days of the effective date of this Order. Failure to comply with this Disciplinary Order will result in the suspension of Respondent's NH real estate license until the fine is paid and the course is completed.

IT IS FURTHER **ORDERED** that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

IT IS FURTHER **ORDERED** that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

IT IS FURTHER **ORDERED** that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER **ORDERED** that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.



David C. Dunn, Presiding Officer



Date

William E. Barry
William E. Barry, Commissioner

04/01/2015
Date

Paul A. Lipnick
Paul A. Lipnick, Commissioner

April 21, 2015
Date

*\ Daniel S. Jones, Commission member, (case evaluator) recused.

**Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301**

In The Matter Of: **Docket No.: 2014-054**
**New Hampshire Real Estate Commission v. Eric J. Hall & Nathaniel J. Roxo &
Antonio F. Roxo**
License No.: 066326; 058328; 051387
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Eric J. Hall ("Respondent Hall") and Nathaniel J. Roxo ("Respondent Nathaniel Roxo") and Antonio F. Roxo ("Respondent Antonio Roxo") in Docket Number 2014-054.

Background Information:

Respondents Eric Hall and Nathaniel Roxo advertised New Hampshire properties and their services as real estate licensees using their direct telephone numbers without including the firm telephone number. On October 7, 2014, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2014-054 against Respondent. Subsequent to an investigation, on February 26, 2015, the Commission issued a Notice of Hearing for a hearing scheduled for March 17, 2015.

On Tuesday, March 17, 2015, at 10:32 a.m., the Commission commenced the adjudicatory/disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
William E. Barry, Commissioner
Calley M. Milne, Commissioner

The prosecution was conducted by Beth Edes, the Commission's Executive Director. Eric Hall, Nathaniel Roxo and Antonio Roxo, were pro se.

The following exhibits were introduced into evidence and accepted into the record:

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2014-054: pages 1-21.

- The Respondent's exhibits introduced:
None.

- There were no witnesses at the hearing.

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

1. Respondent Hall has held a license as a real estate salesperson from the Commission since March 31, 2010. At the time of the allegations, Respondent was licensed as a real estate salesperson, license #066326. Respondent Hall is currently licensed with a license period of March 31, 2014 – March 31, 2016. Respondent Nathaniel Roxo was first granted a salesperson's license by the Commission on December 16, 2003, and has held a license as a real estate broker from the Commission since November 4, 2010. At the time of the allegations, Respondent was licensed as a real estate broker, license #058328. Respondent Nathaniel Roxo is currently licensed with a license period of November 4, 2014 – November 4, 2016. Respondent Antonio Roxo was first granted a salesperson's license by the Commission on January 6, 1999, and has held a license as a real estate broker from the Commission since August 8, 2002. At the time of the allegations, Respondent was licensed as a real estate broker, license #051387. Respondent Antonio Roxo is currently licensed with a license period of August 8, 2014 – August 8, 2016.

2. Respondent Hall and Respondent Nathaniel Roxo advertised New Hampshire properties and their services as real estate licensees on October 3, 2014 using their direct telephone numbers without also including the firm telephone number, nor did they include any identifying information for the telephone numbers.

3. Respondents' reply to the complaint indicated there was a glitch in an automatic email blast advertisement produced by their website software which pulled the agents' profile

information rather than the office profile information in the database, and they provided examples of other advertisements that were in compliance with Commission advertisement requirements.

Respondents stated in their reply that they were discontinuing future email blasts until they are sure all advertisements comply with Commission regulations.

4. Respondent Antonio Roxo is the principal broker of Roxo Realty, LLC and failed to supervise the advertising activities of Respondent Hall and Respondent Nathaniel Roxo.

5. Respondent Hall testified at the hearing that Respondents use a website administrator called z57 Internet Solutions (z57) that created a website for Respondents that sends email blasts out automatically when the Respondents have new listings and when there are updates to the listings.

6. Respondent Hall explained at the hearing that z57 pulls the listing from the Northern New England Real Estate Network (NNEREN) multiple listing site when Respondents enter the listing information into NNEREN. Respondent Hall stated that z57 should pull the individual agent names and telephone numbers and the firm name and telephone number, but the z57 database was only sending out the firm name Roxo Realty and the firm telephone number. Respondents requested z57 to make changes to the database so that the email blasts would also include the individual real estate agent names and telephone numbers, and when z57 made the requested changes, the database sent out the email advertisement dated October 3, 2014 that only included direct telephone numbers for Respondent Hall and Respondent Nathaniel Roxo, and did not include the direct telephone number for the firm Roxo Realty. This October 3, 2014 email advertisement was the basis for Complaint File No. 2014-054.

7. Respondent Hall testified that when this issue with the advertisement was brought to their attention by Investigator Flanagan, Respondent Hall contacted z57 right away to have them stop all email blasts and he requested z57 to change the database back to have the email blasts only display the firm name Roxo Realty and firm telephone number.

8. Respondent Antonio Roxo stated that this advertisement was not intentional that it was an isolated incident and that the Respondents try to comply with the letter of the law.

Respondent Antonio Roxo stated that advertisements were included in the Respondents reply to the complaint that were issued prior to and after the October 3, 2014 email advertisement showing that their advertisements were in compliance with the law.

9. Respondent Antonio Roxo stated, as the principal broker, that he will usually review advertising, such as advertising for open houses, but this advertisement he failed to do so.

Relevant Law:

RSA 331-A:16 Supervision of Real Estate Office; Branch Offices.

IV (b). Any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, direct office number, electronic mail address, or any other means of contacting directly an individual salesperson or broker, or a team of such licensees, shall also include the name and telephone number of the individual principal broker or brokerage firm through which the advertising licensees operate. All such advertising shall contain language clearly identifying each number included in the advertising.

RSA 331-A:26 Prohibited Conduct. – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

XXVII. In the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of licensees and any unlicensed staff.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. The Commission found that Respondents Eric Hall and Nathaniel Roxo advertised New Hampshire properties and their services as real estate licensees using their direct telephone numbers without including the firm telephone number on October 3, 2014, in violation of RSA 331-A:16, IV, (b). (Notice of Hearing, paragraph 5A)

2. The Commission found that Respondent Antonio Roxo as the principal broker of Roxo Realty, LLC failed to supervise the advertising activities of Respondent Eric Hall and Respondent Nathaniel Roxo on October 3, 2014, in violation of RSA 331-A:26, XXVII. (Notice of Hearing, paragraph 5B).

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission has voted to order the following:

IT IS **ORDERED** that a suspended disciplinary fine in the amount of two-hundred fifty dollars (\$250) be imposed to each Respondent, and if Respondents are not found in violation of a similar violation within a year from the date of this Order, the fines will be permanently removed. If the Respondents are found in violation of a similar violation within a year from the date of the Order, the Respondents shall pay the disciplinary fine in the amount of two-hundred fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within thirty (30) days of the date of the finding of a similar violation. If any of the Respondents are found in violation of a similar violation but fail to comply with this disciplinary Order it will result in the suspension of that Respondent's real estate license until the fine is paid.

IT IS FURTHER **ORDERED** that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

IT IS FURTHER **ORDERED** that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

IT IS FURTHER **ORDERED** that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER **ORDERED** that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.

David C. Dunn

David C. Dunn, Presiding Officer

4/21/2015

Date

D. Jones

Daniel S. Jones, Commissioner

4/21/15

Date

Wm. E. Barry

William E. Barry, Commissioner

04/21/2015

Date

Calley Milne

Calley M. Milne, Commissioner

4/21/2015

Date

*\ Paul A. Lipnick, Commission member, (case evaluator) recused.

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2014-049 NH Real Estate Commission v. Robert B. Smaha
Allegations: Rea 404.05 (a)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission (“Commission”) and Robert B. Smaha (“the Licensee” or “the Respondent”), a real estate broker currently licensed by the Commission until May 6, 2016, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to RSA 331-A:29, I and RSA 541-A:31, V, and if such a proceeding were commenced, the allegations against the Respondent would be:

Respondent advertised property on August 21, 2014, located at 358 South River Road, Bedford New Hampshire not owned by Respondent, without identifying himself as a real estate broker. Respondent admits to the violation and indicates that he has removed the sign which will be corrected to comply with advertising requirements.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.

3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall pay a disciplinary fine in the amount of two-hundred and fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within thirty (30) days of the effective date of this Settlement Agreement. Failure to comply with this disciplinary Settlement Agreement by Respondent will result in the suspension of Respondent's real estate license until the fine is paid.
4. The Respondent's failure to adhere to any requirement imposed by this Agreement shall be a separate and sufficient ground for disciplinary action by the Commission.
5. Except as provided in Item 3 and 4 above, this Agreement shall forever bar further disciplinary action or other adverse action by the Commission based upon the specific allegations described above in Paragraph 1, provided, however, that this Agreement may be considered by the Commission in determining whether the Respondent has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.
6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
7. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.

8. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this Agreement.
9. Respondent understands that the Commission must review and accept the terms of this Agreement. If the Commission rejects any portion, the entire Agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this Agreement have prejudiced his right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
10. Respondent certifies that he has read this document titled Settlement Agreement. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this Agreement, he waives these rights as they pertain to the misconduct described herein.
11. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

For the Respondent

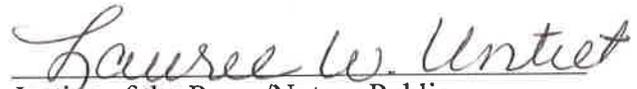
I, Robert B. Smaha, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress,

and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

Dated: 3.13.15, 2015


Robert B. Smaha
Respondent

On this 13th day of March A.D. 20 15
personally appeared the person who subscribe to the following instrument and acknowledged the same as his voluntary act and deed before me.


Justice of the Peace/Notary Public

My commission expires:

LAUREL W. UNTIET, Notary Public
My Commission Expires December 14, 2016

Dated: April 21st, 2015

For the Commission


Beth A. Edes
Executive Director
of the NH Real Estate Commission

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2014-045 NH Real Estate Commission v. Joshua J. Seymour
Allegations: RSA 331-A:26, I; Rea 401.01 (a, 21)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission (“Commission”) and Joshua J. Seymour (“the Licensee” or “the Respondent”), a real estate broker currently licensed by the Commission until June 3, 2016, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to RSA 331-A:29, I and RSA 541-A:31, V, and if such a proceeding were commenced, the allegations against the Respondent would be:

Respondent submitted his NH real estate broker license renewal application to the Commission which was received at the Commission office on July 16, 2014, and he answered “No” to question #8: “Have any licenses which you have held to sell real estate been subject to disciplinary action in any state since your last original or renewal application.”

However, Respondent had entered into a Consent Agreement with the Maine Real Estate Commission for falsely certifying continuing education

requirements for renewal of his Maine real estate broker license and Respondent received a 7 day license suspension and was required to pay a \$600 disciplinary fine; this Consent Agreement was approved by the Maine Real Estate Commission on August 6, 2012.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.
3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall pay a disciplinary fine in the amount of two-hundred and fifty dollars (\$250) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within sixty (60) days of the effective date of this Settlement Agreement. Failure to comply with this disciplinary Settlement Agreement by Respondent will result in the suspension of Respondent's real estate license until the fine is paid.
4. The Respondent's failure to adhere to any requirement imposed by this Agreement shall be a separate and sufficient ground for disciplinary action by the Commission.
5. Except as provided in Item 3 and 4 above, this Agreement shall forever bar further disciplinary action or other adverse action by the Commission based upon the specific allegations described above in Paragraph 1, provided, however, that this Agreement may be considered by the Commission in determining whether the Respondent has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.

6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
7. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
8. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this Agreement.
9. Respondent understands that the Commission must review and accept the terms of this Agreement. If the Commission rejects any portion, the entire Agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this Agreement have prejudiced his right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.
10. Respondent certifies that he has read this document titled Settlement Agreement. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this Agreement, he waives these rights as they pertain to the misconduct described herein.

11. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

For the Respondent

I, Joshua J. Seymour, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress, and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

Dated: MARCH 25TH, 2015



Joshua J. Seymour
Respondent

On this 25th day of March A.D. 2015
personally appeared the person who subscribe to the following instrument and acknowledged the same as his voluntary act and deed before me.



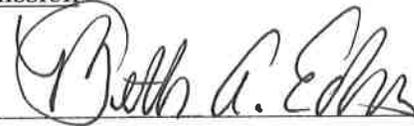
Justice of the Peace/Notary Public

My commission expires:

Rebecca Kaufman
Notary Public, State of New Hampshire
My Commission Expires Jan. 15, 2019

For the Commission

Dated: April 21st, 2015



Beth A. Edes
Executive Director
of the NH Real Estate Commission